

## **REMARKS**

Claims 1-20 are currently pending. Reexamination and allowance of the pending claims are respectfully requested.

### **Claim Rejections**

Claims 1-20 are rejected under 35 USC 103(a) as being unpatentable over Bollay et al. (US Patent # US 7,046,666 B1) in view of Ingmar et al. (US Publication # 2005/0160174 A1). The rejection is respectfully traversed.

#### **Claim 1**

Independent claim 1 recites that "the request frame and the reply frame are formed independent of an IP address", which is not disclosed or suggested by Bollay or Ingmar alone or in combination. In claim 1, both the source address of the request frame and the destination address of the reply frame comprise the MAC address of the first node. The frame formats of the request and reply frames, for example, are shown in FIGS. 2 and 3 of the present invention, wherein no IP address is needed. Thus, both the request and reply frames are formed independent of an IP address.

The Examiner has cited Bollay et al. as teaching various elements recited in Applicant's independent claims. In response, Applicant does not acquiesce to these characterizations and instead has chosen to focus on the secondary reference to Ingmar, which is cited as providing an admitted deficiency of the primary reference.

Namely, as admitted by the Examiner on p. 4 of the outstanding Office Action, Bollay et al. fail to teach that the request frame and the reply frame are formed independent of an IP address. However, in the paragraph [0063] of Ingmar cited by the Examiner, no matter when the user device UD11 transmits an ARP (address resolution protocol) request to get a MAC address to the IP address IPSA1 of the service agent SA1 or when the handler H1 responds with the service agent MAC address SAMAC1 to the user device UD11 (i.e. ARP reply), IP addresses are used, as defined in the ARP protocol. That is, ***IP addresses are indispensable integral parts of the ARP request and reply messages***. Thus, Ingmar fails to disclose that "the request frame and the reply frame are formed independent of an IP address," as recited in claim 1.

Furthermore, the request and reply frames in claim 1 are used to detect the connection status in a network, while the ARP request and reply messages in Ingmar are used to perform address resolution. Thus, claim 1 and Ingmar are also quite different in function.

Thus, both Bollay and Ingmar fail to disclose or suggest all of the limitations claimed in independent claim 1, so claim 1 is believed to be in condition for allowance. Claims 2-11 depend from claim 1 and are likewise believed to be allowable for the same reasons.

#### Claim 12

Independent claim 12 recites that "the request frame and the reply frame are formed independent of an IP address." For the same reasons laid forth above with respect to claim 1, claim 12 is also believed to be in condition for allowance. Claims 13-18 depend from claim 12, and are believed to be allowable for the same reasons.

#### Claim 19

Independent claim 19 recites that "the request frame and the reply frame are formed independent of an IP address". For the same reasons laid forth above with respect to claim 1, claim 19 is believed to be in condition for allowance. Claim 20 depends from claim 19, and is believed to be allowable for the same reasons.

It follows that even if the teachings of Bollay et al. and Ingmar were combined, as suggested by the Examiner, the resultant combination does not teach or suggest: "...wherein the request frame and the reply frame are formed independent of an IP address," as recited in claims 1, 12 and 19.

In considering the above, the Examiner is respectfully reminded that, it is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious. Instead, the Supreme Court, in *KSR International Co. v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007), the Court stated on p. 14 of the published opinion that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

Appellant submits that the above-presented arguments clearly indicate that the Examiner has failed to provide an "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" for combining selected elements of *Bollay et al.* with selected elements of *Ingmar*. *KSR*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007)(p. 14 of published opinion). It is believed to be abundantly clear that the Examiner has taken selected portions of the two references, in a classic case of hind-sight reconstruction having the benefit of Appellant's disclosure. Clearly, such a combination is not an acceptable combination under 35 U.S.C. §103. The rejections of Appellant's claims as being rendered by the aforementioned combinations of references under 35 U.S.C. §103 is respectfully traversed.

**Summary**

In view of the foregoing remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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